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AN ACT

OF THE

GENERAL ASSEMBLY OF ALABAMA,

TO

REGULATE JUDICIAL PROCEEDINGS, &c.,

AND AN

ACT EXPLANATORY THEREOF,

PASSED AT THE CALLED SESSION, 1861

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3000--Published by Authority.

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## AN ACT

To regulate Judicial Proceedings, and for other purposes.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama in General Assembly convened,* That hereafter in the commencement of any suit in any of the courts of law or equity in this State, the court to which any suit, writ, summons, complaint, or bill may be made returnable shall be deemed and held as the return term of such suit, writ, summons, complaint, or bill, and the same shall stand for trial at the next succeeding regular term of such court appointed by law to be holden after such return term; and the parties in the law courts shall not be required to plead at the first term, except that pleas in abatement shall be filed as now required by law: *Provided,* The provisions of this section shall not apply to bills in chancery for partition and sales of property, or in cases for divorce: *And provided further,* That the defendant or party against whom a bill may be exhibited in a chancery suit may come in and consent to a trial at the first term. Under this section, when suits are hereafter brought in the City Court of Mobile to the March or June term of said court, said term shall be held as the return term, and said suits shall stand for trial at the next succeeding December term; and suits that may be brought returnable to the December terms, said December terms shall be held as the return term, and said suits shall stand for trial at the next succeeding June term; the said June term shall commence on the third Monday in May of each year during the continuance of

this act: *Provided further*, That the provisions of this section shall apply to all writs, summonses, complaints, and bills returnable to the Spring term, 1861, of the Circuit and Chancery Courts, whether issued before or after the passage of this act.

SEC. 2. *Be it further enacted*, That in any case where any execution shall have issued or may be issued, founded upon any judgment or decree of any court of record in this State, it shall and may be lawful for the sheriff or other officer authorized to levy such execution to take from the defendant or defendants therein a forthcoming bond, with at least two good sureties, conditioned for the delivery of any property levied upon to satisfy such execution at the place where the same may be made returnable on the return day of such execution; and in the event of a failure to deliver such property on the return day of the execution, according to the condition of the forthcoming bond, the sheriff or other officer levying such execution shall return such forthcoming bond "forfeited;" and such return shall have the force and effect of a judgment against the principal and sureties therein for the full amount of the original judgment and interest and costs thereon, and execution shall issue thereon accordingly.

SEC. 3. *Be it further enacted*, That in case any deed of trust or mortgage, with power of sale, has been or may be executed in this State, to secure the payment of any debt or debts, it shall not be lawful for the trustee or the creditor named in such deed or mortgage to sell any property so conveyed, without having the actual possession thereof, so as to deliver the same to the purchaser upon making said sale. And in the event the grantor in any such deed of trust or mortgage, with power of sale, shall fail on demand to deliver possession of any property or estate so conveyed, after having made default in the payment of the debt thereby secured, it shall be lawful for the trustee or creditor claiming to have legal title to sue for the possession of the same; and, if personal property, the sheriff, upon such suit being brought and affida-

vit of title made, shall take the property into possession, unless the grantor give bond with good and sufficient sureties, as in detinue cases, to be approved by the sheriff or officer serving the summons or writ, conditioned for the forthcoming of the property sued for, to answer the lien created by any such deed of trust or mortgage, or in default thereof to pay such debt and interest thereon, with all costs: *Provided, however,* The surety to said bond shall not be made liable for the value of any such property as may die before the law day of the bond, without fault on the part of the defendant.

SEC. 4. *Be it further enacted,* That hereafter justices' courts in this State for the trial of civil causes shall be held quarterly, at such times as the justices in each beat may appoint, and may continue three days, if necessary; and the term to which any original process, summons, warrant, or complaint shall be made returnable shall be deemed and held the docket term of said court, and the cause shall stand for trial at the next ensuing term thereafter; and on all judgments rendered by any justice in any civil cause the party or parties against whom such judgment may be rendered shall, at any time after the rendition thereof and before the payment of the same, have the right of appeal to the next term of the Circuit or County Court of the county in which such judgment may be rendered, upon giving such appeal bond with surety as is now required by law in appeal cases; and the term to which such appeal may be taken shall be the return term thereof, and the next succeeding term the trial term thereof; and in no case of appeal shall a county tax be charged unless the expense of a jury trial be incurred; nor shall any damages over and above the debt and interest thereon be allowed. Justices of the peace shall make executions issued by them returnable to the quarterly term of their courts next after the rendition of any judgment.

SEC. 5. *Be it further enacted,* That the provisions of this act shall not be held to apply to suits of any descrip-

tion or judgments in any court against defaulting public officers, for failing to pay over money, or for any breach of the duties required of them by law ; nor against trustees for any fraudulent use of trust funds, but such suits and judgments and executions founded thereon, shall be regulated in all respects by the laws heretofore in force in such cases.

SEC. 6. *Be it further enacted*, That the property, real and personal, of all persons, who are or may be engaged in the actual military service of this State, shall be exempted from levy and sale under legal process while so engaged, and for at least sixty days after such persons shall have been released or discharged from such services.

SEC. 7. *Be it further enacted*, That all laws and parts of laws, assessing damages upon appeals to the Supreme Court be and the same are hereby repealed, and no tax fee shall be allowed in the Supreme Court on appeals, unless the appellant appears by counsel and litigates the same.

SEC. 8. *And be it further enacted*, That in all cases where executions have been or may be issued upon existing judgments, orders or decrees of any court, and the plaintiff, his agent or attorney, shall not authorize the officer whose duty it is to levy the same, by endorsement in writing on said execution, to take from the defendant or purchaser of any property which may be sold by virtue thereof, the bills of any of the banks in this State at par, it shall be the duty of such officer, upon the defendant giving a forthcoming bond with surety for the delivery of said property to be sold in satisfaction of said execution on the first Monday in February next. If said property is not delivered at the law day of the bond, the same shall have the force and effect of a judgment, and the clerk shall issue execution thereon for the debt, interest and costs of said judgment and execution.

Approved, 8th February, 1861.

## AN ACT

Explanatory of, and Supplemental to, an act passed at the present session, entitled "An act to regulate judicial proceedings, and for other purposes."

SEC. 1. *Be it enacted by the Senate and House of Representatives, of the State of Alabama in General Assembly convened,* That the duty of the officer which is left unexpressed in the last section of the act above referred to, is hereby made and declared to be, in every case contemplated by said last section, to return the process or execution thus, "Stayed by the failure of the plaintiff or his agent to make the endorsement required by law," and afterwards no further proceeding shall be had in any such case until the first Monday in February next, on and after which day, every such forthcoming bond shall be deemed and taken as a judgment against the obligors therein.

SEC. 2. *Be it further enacted,* That none of the provisions of the act to which this is a Supplement, shall be so construed as to effect any contract which has been, or may be entered into by the State of Alabama, with any Railroad Company.

En. Approved, 9th February, 1861.

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OFFICE OF SECRETARY OF STATE,  
Montgomery, Ala., February 9th, 1861. }

I hereby certify that the foregoing are true copies of the original acts now on file in my office.

P. H. BRITTAN,  
*Secretary of State.*





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